IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1256 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
LAGHDIRBHAI BHAGWANBHAI NAYI - Opponent(s)

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Appearance :

MR IM PANDYA ADDL.PUBLIC PROSECUTOR for Appellant,
MR RAJESH K SHAH for Respondent.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the

judgment and order rendered by learned Additional Sessions Judge, Fast Track No.2, Palanpur in Sessions Case No. 64 of 1998, whereby the present respondent, being accused of the Sessions Case, came to be acquitted by the trial court for the offences punishable under Sections 302 of Indian Penal Code and under sec.135 of Bombay Police Act.

2. Leave to Appeal is granted. Appeal is admitted. Mr.Rajesh K.Shah, learned advocate waives the service of notice of admission on behalf of the respondent.

3. The learned advocates requested the Court to hear the matter finally as the Record and Proceedings from the trial court is available with us and that they would assist the Court with extra copies of the evidence and the documents produced before the trial court. The request is granted and present Criminal Appeal is heard finally.

4. As per the prosecution case, the complainant Mahadevbhai Bhagvanbhai, an agriculturist, was sleeping on 19/5/1998 in the open space after taking dinner and on 20/5/1998, at an early hours at 2.00 a.m. one tractor

came in the filed of Lakhdhirbhai and on hearing the shouts from the filed, the complainant awakened and had gone at the place of incident and seen that Patel Vajesi Joram of his village, was lying in bleeding condition near the cot and tractor was lying near the hedge of the field and at that point of time, the complainant asked his brother Lakhdhir that why he has killed Vajesing, at that time, his brother Lakhdhir told the complainant that the said Vajesing had come with the tractor and had tried to misbehave with his wife and therefore, he has given three stick blows. That thereafter the complainant went to the Sarpanch Devabhai and told him about the incident and the Sarpanch told him to file complaint and therefore, he has filed the impugned complaint at Tharad Police Station. The investigation was handed over to ASI Mr.Pravinbhai Motibhai. He recorded statement of complainant - Mahadevbhai Bhagvanbhai and others and thereafter charge-sheet came to be filed before the learned Judicial Magistrate (First Class), Tharad, which was numbered as Criminal Case No.196 of 1998 and thereafter, the case was committed to the Court of Sessions, which was numbered as Sessions Case No.64 of 1998. The learned Additional Sessions Judge framed the

charges against the respondent accused vide Ex.7 for the offence punishable under sec.302 of Indian Penal Code read with sec.135 of the Bombay Police Act and the respondent pleaded not guilty and therefore, the prosecution examined as many as 11 witnesses and produced on record voluminous documentary evidence. After the evidence of the prosecution was over, incriminating circumstances appearing against the respondent accused was brought to his notice and his defence was of total denial in a statement recorded by the learned Additional Sessions Judge under sec.313 of the Code of Criminal Procedure. The learned trial court, thereafter, heard the prosecution as well as the defence at length and came to the conclusion of acquitting the respondent accused of the charges levelled against him and hence this appeal.

5. Heard Mr.I.M. Pandya, learned Additional Punlic Prosecutor for the appellant - State and Mr. Rjesh K.Shah, learned advocate for the respondent – accused.

6. We have gone through the Record and Proceedings of the Trial Court minutely and threadbare. We have

considered the vital features of the matter and reasonable probability arising out of the circumstances of the case. We have taken into account the appreciation of the evidence undertaken by the learned trial court and reasons assigned for the acquittal. We have taken into consideration the contentions raised by learned advocates in this matter. We have scanned carefully the evidence recorded during trial after re-appreciating it to assess the reasons assigned by the learned trial judge for the acquittal.

7. PW-1 Dr.Arunbhai Harjibhai Acharya is examined at Ex.10 and he has deposed that the deceased has died to to the injuries and it is a homicidal death. The prosecution further examined PW-2 – original complainant - Mahadevbhai Bhagvanbhai Nai at Ex.14. However, he did not support the prosecution and he was declared as hostile. The prosecution further examined PW-3 Bhemabhai Raymalbhai at Ex.20. However, his evidence is contrary to the prosecution case. He has deposed that on the date of the incident on the way he dropped Vajesing on the field and at that time, he was coming back on the tractor of Vajesing and at that time

Lakhdhirbhai met on the way and told the Vajesing why he is asking for money and thereafter he gave one stick blow and thereafter he has ran away and Lakhdhir has killed the Vajesing. As per the prosecution there were multiple injuries on the deceased. However, as per the evidence of the said witness, Lakhdhir gave only one stick blow. In the cross-examination, he has admitted that he is the cousin of deceased Vajesing and that Vajesing neither shouted for help and he is not aware what happened thereafter. He has specifically admitted in the cross-examination that he has not seen Lakhdhir giving stick blow to the deceased and after reaching house he did not inform the family members of the Vajesing and/or any other relatives. Thus, the said evidence does not support the prosecution case. The prosecution further examined another witness PW-4 at Ex.21 who has also not supported the case of the prosecution. It has also come on record that the investigating officer did not collect the blood of the deceased as well as the accused and therefore, it could not be proved whether the blood found on the stick recovered was that of the deceased. This is all the evidence of the prosecution.

8. The learned Trial Judge came to the conclusion that none of the witnesses examined by the prosecution supported the case of the prosecution and the prosecution has failed to prove the case against the respondent beyond doubt and considering the above, the learned Judge came to the conclusion that neither the offence under sec.302 of Indian Penal Code nor offence under sec.135 of the Bombay Police Act could be established by the prosecution against the respondent.

9. We have gone through the evidence recorded and the papers produced by the prosecution. None of the witnesses, inclusive of the complainant, supported the case of the prosecution. None of the witnesses inclusive of the complainant involved the accused in the crime in question. That investigation was carried out by ASI wherein also the statements of the village people came to be recorded and who were also examined before the trial court. However, they do not support the prosecution. The trial court, therefore, considering the evidence of the witnesses examined and after satisfying that none of the witnesses has supported the prosecution case, acquitted the respondent accused.. The conclusion arrived by the trial court could not be labeled as perverse, manifestly

erroneous, palpably wrong or demonstrably unsustainable.

10. The scope of appeal against the acquittal is well defined by law. The orders against the acquittal cannot lightly be interfered unless it is found by the appellate court that the reasoning assigned by the trial court and conclusions arrived were so perverse that in any manner it cannot stand to reason. As discussed above, while assessing the reasons assigned by the learned trial judge and evaluating the conclusions, it is found that the learned trial judge has rightly taken the view to acquit the accused for the charges levelled against him as prosecution could not establish the case against the respondent accused beyond reasonable doubt. The judgment and order impugned in this Appeal, therefore, requires no interference and hence the appeal is dismissed.

(J. R. VORA, J.)

(M.R. SHAHA, J.)

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